

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

– against –

THOMAS SANTOS,

Defendant.

ORDER

20-cr-0481-1 (ER)

RAMOS, D.J.:

On, July 28, 2022, Thomas Santos was sentenced to 84 months' imprisonment after pleading guilty to conspiracy to distribute and possession with the intent to distribute crack cocaine in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841(b)(1)(B).

On March 5, 2024, Santos moved for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 821 to the Sentencing Guidelines. Doc. 218.

Section 3582(c)(2) allows a court, after considering the § 3553(a) factors, to reduce the sentence of "a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has been subsequently lowered by the Sentencing Commission . . . , if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." The relevant policy statement, however, provides that a sentence reduction is not authorized if an amendment "does not have the effect of lowering the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B).

Amendment 821 to the Sentencing Guidelines went into effect on November 1, 2023, and applies retroactively. *See* U.S.S.G. § 1B1.10(d). Among other changes, the amendment modifies the calculation of criminal history points (or "status points") for defendants who committed their offense while under a criminal justice sentence. Additionally, it modified the calculation of offense levels of those defendants who

received zero points in the calculation of the criminal history score and whose instant offense did not involve specified aggravating factors under U.S.S.G. § 4C1.1.

The Court finds that Santos is not eligible for a sentence reduction. As the supplemental presentence report filed by the Probation Office indicates, he is ineligible for the status point recalculation because he did not receive an enhancement for committing this offense while under a sentence of probation. Doc. 221. Additionally, because he does not have zero criminal history points, he is not eligible for the zero-point recalculation. *Id.*

Accordingly, Santos' motion for a sentence reduction is DENIED. The Clerk of Court is respectfully directed to mail a copy of this order to Santos and to terminate the motion, Doc. 218.

SO ORDERED.

Dated: September 16, 2024
New York, New York



EDGARDO RAMOS, U.S.D.J.